

THE CORPORATE GOVERNANCE OF PUBLIC ENTITIES IN ROMANIA

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ABSTRACT: The paper aims to examine the application of principles of corporate governance for transparency and efficiency of decision and control at the level of local public entities. We intend to argue the importance of these principles of governance in the public entities to determine responsibility and management decision-making bodies in achieving the objectives in terms of reliability of financial reporting, effectiveness and efficiency of operations, compliance with applicable legislation.

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Corporate governance - concepts

Corporate governance represents a number of principles and rules used by the companies for organizing and operating the Management Boards so that they can fulfill their attributions, duties, responsibilities and competences, which were given to them, to implement the performances, established as objectives by the owners, including the declared value systems.

Corporate governance includes, from a formal point of view, rules and regulations, and from an informal point of view, business practices that are generally accepted and ethical standards (Maria Manolescu, 2008, p.2).

In other words, it is not enough to assist to a **war declaration** for the value systems promoted by the companies, it is necessary to dispose of a body of experts, with vocational training and professional experience, able to successfully accomplish the missions entrusted to them. Being aware of the importance of a performant management system, the shareholders of important corporations have begun to elaborate Codes of Conduct for “The Boards of Directors” able to promote human resources in the board, having the highest professional demeanor and experience acquired during their career.

The Principles presented by the OECD cover the following areas: I) Ensuring the basis for an effective corporate governance framework; II) The rights of shareholders and key ownership functions; III) The equitable treatment of shareholders; IV) The role of stakeholders; V) Disclosure and transparency; and VI) The responsibilities of the board (OECD). One can notice that the principles are usually inspired from the Corporate Governance Codes established nation wide, the main purpose being to increase the investors, clients, employees and general public confidence, in the management and the supervision of companies which have shares in listed (quotable stock holdings). Such a code is the German Corporate Governance Code (C.G.G.C), which was enforced in 2002, and which gives the companies coherent and balanced guidance for cooperation and interaction between the Management Board, Supervisory Board and the Shareholders Annual Sessions, including the rules regarding transparency, financial reports and the financial assertion review.

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The Corporate Governance Codes contain:

- rules for the selection of the Management Board members;
- rules for the Board's activity, in its relation with the owners and with the specialized department;
- conditions for executive independence and conflict of interest;
- the clearing system for the Management Board members;
- The Board's Committees for the activity of the Board.

The implications of Corporate Governance are various, but we must analyze if Romania is ready to implement this new current which shakes the foundations of the Romanian management science and not only:

- In terms of academic education, the Corporate Governance Course is shyly introduced in the academic curriculum;
- In terms of legislation, the company law, regulates the owners' mission, at the level of General Meeting of Shareholders, without the emphasis on the objectives achieved by the Executive Boards;
- In terms of Romanian companies, only the ones listed category I (for example Petrom SA or banks in general) display on the website the value systems they promote through the corporate governance system, without having the certitude of the correct comprehension of its' mission, summing up the enumeration of the objectives which the company implements.

This promising management domain, remains an open field for the researchers, who only at a first analysis are called to elaborate for Romania a Corporate Governance Code Frame, so necessary for Romanian businessmen, which have to assume an elite business culture for a successful business.

The Corporate Governance Code is therefore the document which contains a series of regulations regarding the relationship between the managers and the owners (shareholders), but also the ones regarding the administrators and the management team.

Research made in the transnational corporations has highlighted the fact that these Codes are structured, respecting in principle, the following guidance:

- **The value system** promoted by the company, in its relation with the external environment;
- **The rules applied to the administrators** regarding the interest or material relationship which they have with the company, direct or mediated;
- **The rules applied to the administrators**, regarding the Integrity Code to which the administrator must accede to and apply in the company's management;
- **The conditions** for filling the administrator position in the industrial companies.

No matter the situations encountered in the transnational corporations, regarding the adoption of Corporate Governance Codes, a legitimate and inborn question can be asked: In which situation is now Romania found? For answering this question we examined, analyzed and studied the necessary legal framework for the operation of companies (the law 31/1990 regarding the companies) which regulates, beside the legal form of organization of these and the relation between the shareholders and administrators, on one side, and the relations between the administrators and the management team, on the other side.

The Declaration of Independence (optional by law), but also the one regarding the financial advantages, constitutes the first step in the elaboration of a Corporate Governance Code for the Romanian companies.

To be mentioned is the fact that the relation **shareholders-administrator** refers to the unitary management system of the company which includes The General Meeting of Shareholders – The Executive Board and The Directorate.

a) As for the relation **administrator-management team (directorate)**, the rules, in this situation, are extremely simple. Explanatory in this direction are the attributions which the Executive Board has, in this category being included:

- The attribution regarding the supervision of executive team members;
- The attribution regarding the main activity and development directions of the company, in the limit of the activity objective and the strategy approved by the company;
- The attribution regarding the assignment of the management team members and the establishment of their remuneration.

What is remarkable for our research is the fact that from the members of the Executive Board, can be assigned the company's CEO, so that the model PDG (president – CEO) is applied in the majority of the analyzed companies. More, the research shows the poor preparation of the Executive Board members, but also a weak interest for the current and strategic management activity of the company. Maybe a strong model with a president and an Executive Board is the way to success, but also a guarantee for shelter against the risk which the companies encounter, regardless of their form of expression.

If the problem of The Declaration of Independence is rather resolved by the new amendments of The Companies Law, one can not say the same thing about The Declaration of Integrity of the administrator.

What does it say? The Declaration of Integrity is not a new element for the countries which have already adopted the Corporate Governance Code. This declaration refers to the administrator's activity in the interest of the company, stipulations included also by the Romanian Legislator in the amendments to the Law 31/1990 regarding the companies. Even though these amendments refer to the loyalty and concern the activities performed in the company's interest, we appreciate that The Declaration of Integrity shall be completed with a series of stipulations regarding:

- The administrator's behaviour, according to the requirements provided by business ethics;
- The administrator's actions, which have to lay out independence in thinking and judgement;
- The efforts in the direction of ensuring performance and duties which the administrator has to fulfill;
- The orientation towards teamwork and the promotion of a favourable work climate submitted by the employed personnel.

The Declaration of Integrity is finally a guarantee for the shareholders (owners) that the activity performed by the administrator will be in accordance with the highest standards of integrity, so that the success and also the performance of the company will be fully assured.

We appreciate that The Declaration of Integrity must be completed with stipulations regarding the administrator's behaviour before processing these responsibilities. We refer here to his actions, especially regarding **business management** practices for which he was criminally charged or contravenitionally sanctioned. Only so the administrator will benefit from the shareholders by that **Trust Certificate** necessary for achieving a good administration of the company's business.

But The Declaration of Independence and The Declaration of Integrity, are from now on chapters well developed and explored (in the national and international literature) but are not sufficient for regulating the relation between owners (shareholders) and administrators, and further the relation between the management team (known as the executive team).

For that, in our opinion, it is necessary to add the conditions for filling the executive function, which refers to:

- **Similar experience** – is sustained by the argument **seniority** which refers to the necessary age to perform the profession, which in general, has to be the same with the activity performed by the company, but also refers to the age necessary for leading a similar activity as the one performed

by the company. The age in the profession and the experience in leadership are criteria which can assure the owners of the company that the administrator has the necessary abilities and the aptitudes for taking decisions regarding the production activity (dominant in industrial companies), which can afterwards lead, to the performance required by the owners;

• **Professional background** – is the second condition which has to be required by the **Corporate Governance Code**. This assures the owner of the company that the administrator has the necessary theoretical background for performing efficient leadership activities, in the interest of the company. The lack of this speciality background, congruent with the performed activity's profile of the company can lead in time to serious deficiencies of organization with immediate and direct effect over the management and the performance obtained by companies;

• **The terms of office** is the one established by law, respectively four years. The renewal of the terms of office is unlimited! For avoiding the "wearing out" in the executive activity of the company, and so an executive activity which can determine **dissatisfactions** is advisable, that the executives to be allowed the most two consecutive terms of office. We appreciate that is the period which can determine (from the executives' side) the best efficiency as far as the innovation and the business development, as to the "wearing out" (saturation) mentioned before.

More, the terms of the office must be completed with definitions regarding the administrator's age. Getting to the legal age for retirement can be a limited condition for the expulsion of the nominations laid down for the executive position.

• **The conditions for losing the executive quality** can be various, but we will refer only to those situations which regard the company's activity. So conditions refer to:

- a) The lack of performance in the company's activity, based on the exclusive blame of the executives on consecutive periods of time;
- b) Performing their attributions, according to the law, with bad faith;
- c) Not taking the measures, in real time, for avoiding some dysfunctions in the company's activity or the measures concerning the risk protection;
- d) Not to exercise the management team's supervision attributions;
- e) Default to the Executive Board's sessions, three consecutive times or the unjustified absence for a long period of time.

With these additions, The Corporate Governance Code will follow these objectives, on long or short time:

- The professionalization of the management activity in the industrial companies;
- The forming of a business class, specialized in the business administration of the companies;
- Avoiding some possible interest conflicts of the administrators for not effecting the performance and the efficiency of the company's activity;
- Establishing some partnership between owners and executives, based on the settlements of the Integrity Code, as part of The Corporate Governance Code;
- Establishing some conditions for filling in the administrator positions, as a guarantee for the success and the business performance in companies (regardless of their nature).

The researches attempted by us are not restrictive. Worthwhile is the initiative of the Romanian legislator which, through the amendments on Law 31/1990 regarding the companies made the first steps in implementing the Code so necessary to businesses in Romania, the more so as the companies are aware of the importance of the implementation la Corporate Governance, no matter the model we choose; in the scientific circles, the points of view are not entirely harmonized regarding which is the most functional one [2].

Only so, we appreciate, that we will identify an answer to a series of questions regarding:

- The placement of the executives in their relation with the companies;
- The placement of the management team members in their relation with the executives;

- The value systems promoted by the companies in their relations with the company's stockholders.

Finally, the relative unsatisfactory application of the existing references regarding the remuneration of the executives can raise serious problems regarding the efficiency of the corporate governance guideline. The Committee's Services have launched a study on this theme, whose results are expected by the end of 2009 [6].

The importance of corporative principles in the public institutions

For the promotion of the research in the field of corporate governance The European Corporate Governance Institute (ECGI) was set up, the foundation of the responsibility in companies, institution and industry, balancing the economic corporate objectives and the social ones, looking on the community on one side, and on the other side looking on the individual aspiration. More, the financial crisis tested the corporate governance regime from banks and investment companies, which proved themselves to be serious inadequate. The European Committee Transmission on 4th Mach 2009 said that this situation would be the objective of a report presented at the end of the year.

As for the public authorities, their role for the civil society, and for the business environment, is now well - known, being the assurance of public services based on the financial resources collected from the contributors as taxes.

Even though the mechanism, which describes the public authorities role, is relative simple, their mission is not easy. The business internationalization, the capital flow liberalization or the financial globalization have given serious bother to the authorities, which faced an apparent antagonist problem: the contributor, who will always ask for a small volume of taxes to pay, while the public service beneficiary has need of various and complex public services, which are rising.

But the public services cannot be assured without an adequate consumption of public resources, and in front of this situation (the increase of the need of resources and the decrease of collections) the authorities appeal to, as far as the law permitted them, solutions as loans or the capitalization of some goods – the authorities' property.

The budgetary deficits in the public sector have increased, and finally the contributor (individual or legal person) suffered, the contributor who had to bear, through taxes, the rates of public credits, which have an interest not to be neglected.

But to what extent the public authorities appeal to public management and what relations and interrelations are established between them and the industrial companies?

The researches performed have shown the fact that, in the literature the public management [1] means those processes and techniques of specific management, throughout the financial resources in the public sector follow the most reliable track, in conditions of economic performance (respecting the theory of 3E), through the decision of the authorities, for achieving the highest quality public services.

We consider necessary the application of principles and practices of corporate governance for the transparency and the efficiency of the management systems' decision, but also for the control of local public entities, with the final purpose to increase the credibility of financial statements.

The State can appear only as a shareholder in entities that provide utilities, as long as the State is placed in a normal market; there for it must assume the same risks as private entities but only in the extent of its listing [4].

The corporate governance in public local institutions materialize in the supervision and the evaluation of the performance of the use of public money, satisfying in the same time the needs of all interested parts (contributors, service providers, investors, social service beneficiary etc.) causing the growing of the prestige of these institutions as a result of the increase of credibility of

their stock holdings by establishing an agreement between the declared principles and the entities' behaviour, between declarations and facts.

The application of corporate governance principles leads to attain the objectives as regards the reliability of financial reporting, the efficiency and the efficacy of operations, the compliance to the applicable legislation in public local institutions. Within this context, we must follow the manner in which the citizens participate in the process taking and implementing the public local institutions' decisions, the transparency in taking and implementing the public local institutions decisions, the promptitude to which these respond to the real needs of the citizens, as well as the efficacy of the public resources orientation towards the general interest of the community, the spending of public resources efficiently and legal.

We must not neglect the context, which characterize the present stage, which is in progress: the transition from global governance to local governance. The purpose is to emphasize and to analyze the stage of governance in the public institutions of the public local administration related to the concept of corporate governance and to evaluate the necessity of the implementation of the corporate governance principles with the aim to discipline the involved parts, to maximize the efficiency, the performance of public local entities, basically to create the conditions to organize, lead and control the entities of public local administration as well as a business, profitable and efficient, so much as they are financed with public money.

All these, so that measures can be taken, throughout the implementation of transparency principles, participation and promptitude, responsibility, efficiency and credibility of financial statements can be assured to the institutions of the public local administration, taking into consideration the sustained process of decentralization, to transfer the responsibilities to the local communities as well as the necessity to implicate more the citizens in their double quality: contributors – the financial supporters of the local budget and in their quality of beneficiary of the activities of the public local entities.

The transition to the market economy implies the solving of many problems, one of them being the increase in the performance of public money use, satisfying at the same time the needs of all interested parts, which can determine the increase in the prestige of the public local institutions. It is necessary a change in the perception of all involved “actors” – contributors, service providers, investors, beneficiary of social services, elected leaders, responsible, etc., for the manner in which the public money is being managed.

Without any essential transformation, thorough in economic thinking and economic attitude, it is unthinkable the crystallization of an authentic market economy in Romania.

Conclusions

Times are in continuous change, being a time of efficiency, productivity, performance, a time to connect the traditional values to the values of the developed countries in the European Union. In these conditions the idea that the public entities need to be managed as businesses, that means profitably and efficiently, especially since they are financed from public money, is starting to have more and more followers. Consequently in order to change the management and control manner of the public institutions, the relation between them and the economic and social environment it is required to also apply the concept of corporate governance to public entities.

Because the transfer process of the activities and adequate resources from the state budget towards the public local authorities for the finance of public services destined to local communities: health, culture, Community police, firemen, civil defense etc. is intensified, it increases the role and the importance of public administration. On the other hand the development of the democracy reclaims establishing a new relationship between citizens and administration, the increase and the strengthening of the local authorities' role and the reappraisal of the partnership with a civil society. In these conditions there are many motives for the structural and functional modernization of the public local administration with the aim of more efficient functioning of these institutions. More

strongly the need for a modern, flexible public local administration is developed, an administration open to the partnership public-private, an administration which has to satisfy the exigency of citizens-contributors.

In conclusion, it is necessary to develop an efficient model of governance of public local institutions, materialized in a model which controls and evaluates the performance of public money use, a model which applies the corporate governance principles with the purpose of ameliorating the public sector's performances by displaying itself to the market mechanisms rigours.

The above paper tries to present arguments for implementing the principles of Corporate Governance in public entities. As a sequel of our scientific intercession we will produce a model of Corporate Governance, that will efficientize the activity of these entities.

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